

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE NORTHERN DISTRICT OF TEXAS**

3 **EROS COOK,**                                   §  
4   §  
5                   Plaintiff,                   § **Civil Action No.**  
6   §  
7                                   **v.**                                   §  
8   § **Jury Trial Demanded**  
9 **ITT TECHNICAL INSTITUTE,**           §  
10   §  
11   §  
12                                   Defendant.                   §  
13   §

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14   **COMPLAINT**

15                   EROS COOK (“Plaintiff”), by and through his attorneys, KIMMEL &  
16                   SILVERMAN, P.C., alleges the following against ITT TECHNICAL  
17                   INSTITUTE (“Defendant”):

18   **INTRODUCTION**

19                   1.       Plaintiff’s Complaint is based on the Telephone Consumer Protection  
20                   Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

21   **JURISDICTION AND VENUE**

22                   2.       Jurisdiction of this Court arises under 28 U.S.C. § 1331, which grants  
23                   this court original jurisdiction of all civil actions arising under the laws of the  
24  
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1 United States. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181  
2 L. Ed. 2d 881 (2012).

3 3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

4 **PARTIES**

5 4. Plaintiff is a natural person, who resides in Dallas, Texas 75232.

6 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7 6. Defendant is a corporation with its headquarters located at 3781 Park  
8 Mill Run Drive, Hilliard, OH 43026.

9  
10 7. Defendant is a “person” as that term is defined by 47 U.S.C. §  
11 153(39).

12 8. Defendant acted through its agents, employees, officers, members,  
13 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
14 representatives, and insurers.

15 **FACTUAL ALLEGATIONS**

16 9. Plaintiff has a cellular telephone number.

17 10. Plaintiff has only used this phone as a cellular telephone.

18 11. Beginning in or around May 2016 and continuing thereafter,  
19 Defendant called Plaintiff on his cellular telephone on a repetitive and continuous  
20 basis.

21 12. During the relevant period, Defendant called Plaintiff on his cellular  
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1 telephone multiple times per day.

2 13. When contacting Plaintiff on his cellular telephone, Defendant used  
3 an automatic telephone dialing system and automated and/or pre-recorded  
4 messages.  
5

6 14. Plaintiff often would answer a call to be greeted with an automated  
7 recording before speaking to one of Defendant's representatives.  
8

9 15. Defendant's telephone calls were not made for "emergency  
10 purposes" since Defendant has been calling Plaintiff regarding an unknown third  
11 party.

12 16. Desiring to stop these repeated calls, Plaintiff spoke with Defendant  
13 in May 2016, told Defendant they were calling a wrong number and requested  
14 that the calls stop immediately.  
15

16 17. Once Defendant was told the calls were unwanted and to stop, there  
17 was no lawful purpose to making further calls, nor was there any good faith  
18 reason to place calls.  
19

20 18. Despite Plaintiff's clear revocation of consent to call his cellular  
21 phone, Defendant persisted in calling Plaintiff through August 2016.

22 19. These calls were frustrating and annoying for Plaintiff, as such,  
23 Plaintiff took measures to block Defendant's calls by downloading a blocking  
24 application on her cellular telephone.  
25

1       20. Upon information and belief, Defendant conducts business in a  
2 manner which violates the Telephone Consumer Protection Act.

3                   **DEFENDANT VIOLATED THE**  
4                   **TELEPHONE CONSUMER PROTECTION ACT**

5       21. Plaintiff incorporates the forgoing paragraphs as though the same  
6 were set forth at length herein.

7       22. Defendant initiated multiple automated telephone calls to Plaintiff's  
8 cellular telephone using a prerecorded voice.

9       23. Defendant initiated these automated calls to Plaintiff using an  
10 automatic telephone dialing system.

11       24. Defendant's calls to Plaintiff were not made for emergency purposes.

12       25. Defendant's calls to Plaintiff were not made with Plaintiff's prior  
13 express consent as Defendant was attempting to speak to an unknown third party.

14       26. Defendant's acts as described above were done with malicious,  
15 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
16 under the law and with the purpose of harassing Plaintiff.

17       27. The acts and/or omissions of Defendant were done unfairly,  
18 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
19 lawful right, legal defense, legal justification or legal excuse.

1       28. As a result of the above violations of the TCPA, Plaintiff has suffered  
2 the losses and damages as set forth above entitling Plaintiff to an award of  
3 statutory, actual and treble damages.

4       WHEREFORE, Plaintiff, EROS COOK, respectfully prays for a judgment  
5 as follows:  
6

- 7           a. All actual damages suffered pursuant to 47 U.S.C.  
8           §227(b)(3)(A);  
9           b. Statutory damages of \$500.00 per violative telephone call  
10           pursuant to 47 U.S.C. §227(b)(3)(B);  
11           c. Treble damages of \$1,500 per violative telephone call pursuant  
12           to 47 U.S.C. §227(b)(3);  
13           d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3); and  
14           e. Any other relief deemed appropriate by this Honorable Court.  
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**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, EROS COOK, demands a jury trial in this case.

Respectfully submitted;

DATED: August 31, 2016

/s/ Amy L. Bennecoff Ginsburg  
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